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November 1, 2022

VIA ECF

Hon. Katharine H. Parker
United States Magistrate Judge
United States District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

The parties' proposed changes to the transcript for the October 25, 2022 case management conference are approved. The transcription service that prepared the transcript is respectfully directed to incorporate the changes. The parties shall send a copy of this order to the transcription service.

SO ORDERED:


HON. KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE 11/02/2022

**Re: *Averbach et al. v. Cairo Amman Bank*, 19-cv-00004-GHW-KHP
Letter Motion Requesting Approval of October 25, 2022, Transcript Errata**

Dear Magistrate Judge Parker:

At Chambers' instruction, and at the request of the transcription service that prepared the transcript for the October 25, 2022, case management conference, we write jointly on behalf of the parties to request that the Court approve the proposed changes to the transcript attached hereto as a clean document in **Exhibit A** and a redline in **Exhibit B**.

Respectfully submitted,

/s/ Dina Gielchinsky

Encls.

cc: All Counsel

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
AVERBACH, et al., : Docket #19cv0004
 : 19-cv-00004-GHW-KHP
 :
 Plaintiffs, :
 :
 - against - :
 :
 CAIRO AMMAN BANK, : New York, New York
 : October 25, 2022
 Defendant. :
 ----- :

PROCEEDINGS BEFORE
THE HONORABLE KATHARINE H. PARKER,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
None				

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

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THE CLERK: Calling case 19cv004, Averbach versus Cairo Amman Bank. Beginning with the counsel for the plaintiffs, please make your appearance for the record.

MR. MICHAEL RADINE: Good morning, Your Honor, I'm Michael Radine for the plaintiffs. Do you mind if I sit to speak?

THE COURT: No, go right ahead.

MR. RADINE: Thank you. I'm joined by Dina Gielchinsky and Ari Ungar.

THE COURT: Hi, nice to see you.

MR. RADINE: Nice to see you, Your Honor.

THE CLERK: And counsel for the defendants, please make your appearance for the record.

MR. JONATHAN SIEGFRIED: Good morning, Your Honor, Jonathan Siegfried, Andrew Peck, Erin Collins, and Margaret Civetta.

THE COURT: Nice to see everyone. Thank you for coming in on this rainy day, and I have your status letter from October 20. I thought we could go over some of the issues in more detail. The bank has been strongly contesting the basis for jurisdiction, and it seems from the letter that plaintiffs believe that the evidence exchanged thus far supports jurisdiction, but I'd like to

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2 | hear a little bit more on that.

MR. RADINE: Sure, so, well, I can start there. What we've produced to them so far is 118 transactions, our records evidencing those transactions, and then we have about a dozen more that we located that we have informed them of that we are processing to give them shortly, in the next day or so. Of those 118, 101 of those are direct transactions that Cairo Amman Bank processed through its correspondent account at Citibank in New York, and 17 are transactions that appear to have been processed through a nested account they held at Arab Bank where Arab Bank uses its correspondent account in New York to process the transaction.

15 That structure of using a nested account to
16 process a transaction through New York, the
17 jurisdictional relevance of that structure is currently
18 sub judice before the Second Circuit in *Spetner v.*
19 *Palestine Investment Bank* as to whether that meets the
20 *Licci* standard given that another bank is interposed in
21 that flow.

22 But, again, of the 118 we've produced so far,
23 that constitutes 17 of those transactions. The rest are
24 direct transactions.

25 So they are transactions of significant amounts.

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We've produced a spreadsheet to them. I have a copy if
Your Honor would like to see it here.

THE COURT: Sure. If you have it, I'll take a
look.

MR. SIEGFRIED: Your Honor, we have objections
to that since we haven't actually been able to even
verify anything regarding these transactions.

THE COURT: Okay, I mean this is not evidence,
in any case.

MR. SIEGFRIED: I understand it.

THE COURT: So I'm not taking it for any
purpose other than this conversation.

MR. SIEGFRIED: Sure.

MR. RADINE: So this is the spreadsheet we
produced to them, so it does not include the last dozen
that we've located.

THE COURT: Okay.

MR. RADINE: So the way to read this, obviously
printing Excels is always a bit of a pain.

THE COURT: Right.

MR. RADINE: It goes, if you will, to the right
and down to the right and then down to the right and then
down. So an entire row is expressed over a page and the
next page, if that makes sense.

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THE COURT: Uh huh.

MR. RADINE: So on the top half of the first page here we start with the nested account transactions. So you'll see there should be about 17 of them, and you have the first half of the information on page 1 and the second half on page 2. And then below that with the direct transactions, again, first half on page 1, second half on page 2, and then repeating in that pattern through the other pages.

So we've asked them if they dispute the accuracy of this, but obviously we're not asking them if they think this is jurisdictionally sufficient, just whether this reflects the evidence we've produced to them.

THE COURT: Okay.

MR. RADINE: Now, we understand from them that they do not think that transactional information is sufficient to prove personal jurisdiction on its face. They've asked us what information or evidence we intend to put in at this stage and so on. We're at a bit of a loss as to what that would be under *Licci*. The evidence that relates to personal jurisdiction is transactions for, relating to the terrorist group in question from which the claims arise.

So we understand that they've argued that the

evidence, we have not - I'll just quote so I don't misstate it - that we have, quote, "not provided evidence sufficient under the Due Process Clause," close quote, to show, quote, "that the claims in this action arise out of or relate to any transfers processed through its correspondent accounts in New York," close quote, because, they argue, last quote, "transfers involving routine banking transactions and for humanitarian services, for example, do not give rise to claims under JASTA."

So our position is that's a merits question. The law in this case, as Your Honor pointed out in two reports and recommendations, is that the Second Circuit noted that the use of a correspondent account standing alone could be grounds to find personal jurisdiction so long as the use is purposeful. That's from Your Honor's 2020 opinion.

THE COURT: Right.

MR. RADINE: And purposeful, as this Court explained, means repeated and volitional as we argued these were and I think as this chart suggests.

THE COURT: Can I ask you something about - I'm sorry to interrupt, but I'm just looking at the dates of these various transactions. Is there relevance to the

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2 dates, I mean when was, I see a bunch are Holy Land
3 Foundation, some Interpal, some others. Were any of
4 these Holy Land Foundation transactions after this
5 designation?

6 MR. RADINE: They were all after the Israeli
7 designation of Holy Land Foundation which we alleged was
8 publicized and, therefore, sufficient under *Honickman*.
9 They're not after the U.S. designation because that
10 would've prevented the correspondent banks from
11 processing these transactions.

12 THE COURT: Okay. Okay. So none of these are
13 post-U.S. designation?

14 MR. RADINE: Right, there wouldn't be U.S.
15 dollar transactions post-U.S. designations. So for HLF
16 that's the end of 2001, but for Interpal, of course,
17 that's 2003. And then some entities weren't designated.

18 THE COURT: Right, but you have Interpal
19 transactions from prior to the violence at issue.

20 MR. RADINE: Yeah. So anyway, the personal
21 jurisdiction, so obviously *Kaplan* and *Linde* make clear
22 that what constitutes routine banking is for a jury to
23 decide. Whether it's knowledge is sufficiently-or,
24 general awareness is sufficiently established from a
25 humanitarian purpose of a transactions is a merits

question that we'll obviously arrive to when we get into merits discovery, but there's not been a court that's held that a defendant's knowledge has to be evident on the face of each transfer. That could be proven in any number of ways.

THE COURT: At least for jurisdiction you're saying.

MR. RADINE: At least for jurisdiction, right. So arising out of, which is their argument is on the due process version of "arising out of." There's the New York version of "arising out of" and the due process version. According to their letter, they're contesting the due process version. Of course, as this Court noted, they had not contested the New York "arising out of" version in a motion to dismiss. In any event, the Second Circuit has never, they note this in *Licci*, found a case where plaintiff satisfied the New York rule but not the due process rule.

As this Court noted, under the New York rule, quote, "the foreign bank's use of its correspondent accounts is not completely unmoored from the legal claim regardless of the ultimate merits of the claim" is the standard that Your Honor set out correctly. And then as for whether the - whether due process could operate

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2 differently, Your Honor noted, quote, "CAB offered no on-
3 point case authority supporting this argument." The
4 Second Circuit does not appear to have seen it either.
5 So we think that's that for personal jurisdiction.

6 Now, we want to come to understand more about
7 how the bank operated that we think bears on the
8 transactional element and the documents they could have,
9 and that's where the 30(b)(6) deposition notice comes in.
10 And I can speak on that briefly, Your Honor.

11 THE COURT: Yes.

12 MR. RADINE: So we've noticed three issues to
13 them. The first relates to the IT systems that the bank
14 used during the relevant period as they relate to
15 transaction processing. So they have explained to us
16 before a little bit about their understanding of their
17 systems at the time. They explained that they used the
18 Kindle Banking System in the relevant period. That's
19 been taken offline, and they don't have - the system is
20 not supported anymore nor is the associated OS and
21 hardware. And they mentioned they don't have backups and
22 archives.

23 It's been our experience working with banks in
24 these cases that what is not currently usable by the
25 bank's IT staff is not necessarily unrecoverable.

Relevant data may sit on multiple systems, it may have been transferred to another system, recovery may be possible. It may necessitate a vendor who specializes in recovery work. In any event, we won't know until we ascertain what systems were used. I'd also point out that that's a single system. So in our experience banks use multiple systems. We've seen that the system that runs the SWIFT database which its transactions are processed through and other banks is not the same as their core banking system which is what I believe the Kindle system likely is. There may not be more to draw from this line of inquiry, but we can't know until we begin to have it.

The second issue is that of the CAB's use of correspondent accounts and nested accounts. As Your Honor raised at our last conference, it's worth knowing how the bank used its correspondent accounts generally, it gives a sense of the jurisdictional contacts they had when processing the transactions. And then in the nested account which is sub judice, the impact of that, in *Spetner*, I would imagine the bank, just as much as us, would like to know if CAB used its nested account in a way that was similar or different than the defendant in that case.

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2 THE COURT: And how did the defendant use the
3 nested account in the cases pending before the Second
4 Circuit?

5 MR. RADINE: So those transactions, when a
6 customer of the bank wants to push a transaction, they
7 will indicate who the ultimate beneficiary is. And then
8 those are instructions that the originator bank, the
9 defendant, would then give to their bank where they hold
10 their nested account for further credit down the line
11 ultimately through New York and then to the opposing
12 party, the counterparty to the transaction.

13 So in a sense that when a bank holds a
14 correspondent account in New York, when they send a
15 transaction through New York, they're providing
16 instructions to each bank down the line as to moving it
17 along. This just adds another bank. So the question
18 would be, for instance, like what control does the
19 defendant have --

20 THE COURT: Why does it go through a nested
21 account versus just going through its own, why would it
22 add a party instead of minimize the parties?

23 MR. RADINE: So --

24 THE COURT: What's the purpose of being --

25 MR. RADINE: Sure, banks hold nested accounts

1
2 for different reasons. That's something we'd certainly
3 get into with them. Sometimes they're unable to hold, a
4 New York bank won't offer them an account or at least an
5 account with terms they want --

6 THE COURT: But we know that CAB did have some
7 correspondent accounts.

8 MR. RADINE: Right. It could be a legacy
9 account that they had from before they had access to New
10 York accounts that they were still using. These are all
11 things we would get into with them and see whether or not
12 that's a fruitful topic to understand.

13 The last issue relates to their sale of relevant
14 branches to Palestine Islamic Bank. They informed us
15 that whatever records were at those branches in the
16 Palestinian territories were transferred to the buyer
17 bank when they bought those branches because possession,
18 custody, and control can relate to whether or not you
19 have the right to demand records back. We just want to
20 understand what the agreement was as to those records,
21 document sharing, however that operated, whether
22 documents were transferred back to CAB at all.

23 Now, on these topics we have a corresponding set
24 of document requests, we have four document requests that
25 relate to these topics. CAB in a meet and confer told us

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2 maybe those records will answer our questions without the
3 need for deposition. We're, of course, open to that, to
4 see those records and to see if that makes sense. We
5 think we'd likely, at least from our experience in the IT
6 process that we've gone through with other banks, I
7 imagine we would have follow-up questions. But, of
8 course, you know, we are happy to look at the documents
9 first and talk to them about that.

10 THE COURT: Okay.

11 MR. RADINE: So the big takeaway, Your Honor,
12 is that between the continuing work of the banks that
13 we've issued subpoenas to and the deposition process,
14 we'd like to extend the discovery period. We propose 90
15 days in part to get us past the holidays from which we
16 imagine we'll have a little bit less responsiveness from
17 the banks and so on, and that would put us on February 2.

18 THE COURT: Right, well, we had November 14 as
19 completion of jurisdictional discovery. So you want a
20 90-day extension on that.

21 MR. RADINE: Yeah, I think November 4 is the
22 deadline, and the --

23 THE COURT: Maybe I have a typo in my notes.

24 MR. RADINE: Sure, November - so 90 days from
25 November 4 would be February 2. Of course, we don't have

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2 the Court's decision on the R&R, so our feeling is is
3 that this is time we can use productively to do this
4 work.

5 THE COURT: Okay. I'll hear from defendants
6 next about these issues and also the extension of
7 discovery.

8 MR. SIEGFRIED: Thank you, Your Honor. Dealing
9 about nesting, which is in your mind at the moment,
10 having looked at that chart, I don't want to - and you
11 also said before you're not deciding merits --

12 THE COURT: No.

13 MR. SIEGFRIED: -- at a status conference. So
14 I'm not going to argue a great deal about the merits
15 other than to note a couple of things. One, the very
16 beginning of their chart is replete with these so-called,
17 what they're now calling, nesting transfers. Now, it's
18 interesting actually because the plaintiffs like to keep
19 changing their theory in this case. First of all,
20 there's absolutely nothing in the complaint about
21 nesting. In fact, as you may recall, what we brought to
22 the Court's attention is that allegations in the
23 complaint regarding these transfers, that they were all
24 through Citibank, were incorrect when made, when the
25 complaint was drafted. And then when you inquired of Mr.

Osen about that issue when he was here, he said, oh, well, but we're not sure because the transfer slips don't necessarily show us whether it went through Citibank, and we don't have the complete transfer slips, so it may have gone through Citibank.

I gather they've now, because they should, have retreated from that argument to now talk about it as a nesting argument. And as far as a nesting argument is concerned, Your Honor, since they raised it and since I assume it will come up again, the case is *Spetner v. Palestinian Investment Bank*, 495 F. Supp. 3d 96, a 2020 decision, in which not just any plaintiff but these Plaintiffs represented by Mr. Osen and his firm, the same counsel that you have before you, made every conceivable argument under the sun to Judge, I think it's Komitee is, is that --

THE COURT: Who?

MR. SIEGFRIED: K-O-M-I-T-T --

THE COURT: Oh, Komitee.

MR. SIEGFRIED: Komitee. I don't know where you put the accent on that. Mad a whole bunch of arguments because the situation was even more involved than it is here. They had three different nesting theories. And he carefully reviewed each one, and he

1 said there was no personal jurisdiction. That is the law
2 as it stands right now. Mr. Radine is correct that they
3 have appealed to the Second Circuit. Obviously, I
4 wouldn't say anything about how you might judge the
5 matter, but I think that if you read the decision, it's a
6 fairly thorough, careful, detailed decision as to why
7 that theory simply doesn't hold water.

8
9 THE COURT: Of course, that's only with respect
10 to 17 transactions. The other ones are through --

11 MR. SIEGFRIED: And let's go to the others.

12 THE COURT: Yeah.

13 MR. SIEGFRIED: Then we have a whole bunch of
14 NatWest transactions that, of course, didn't go through
15 New York. A lot of them are in Sterling, some of them
16 are in (indiscernible), but they're not through Citibank
17 in New York. There are --

18 THE COURT: None of these are through New York?

19 MR. SIEGFRIED: No, I'm not saying that, Your
20 Honor. I've got a large sheet here, but I think that the
21 last time we looked, they keep making ongoing
22 productions, but the last time we looked, there were
23 maybe only a couple, two or three, that went through
24 Citibank. So, again, this is why, when I objected
25 before, I said there was much to be said about this.

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2 Then we have issues regarding this contention by Mr.
3 Radine, by the plaintiffs, that this is somehow a merits
4 issue. Your Honor, we will have the opportunity
5 obviously to brief, and for you to consider, this issue,
6 but the Due Process clause, insofar as this is concerned,
7 is not a fifth grade math class in which you say how many
8 transfers were there and, therefore, oh, there must be
9 jurisdiction. Not any transaction will do.

10 The Due Process clause, and everyone from the
11 Supreme Court to the Second Circuit have been quite
12 clear, that the second part of this analysis, beyond the
13 number of transfers, which may be relevant to the issue
14 of purposefulness, the main part of due process is that
15 the claim must arise out of or relate to the transaction.
16 It's the nature of the transaction that is
17 extraordinarily important, and when we get to the merits
18 of this topic, we will address it, and, indeed, I think
19 you'll see that these claims do not, cannot relate to or
20 arise out of any of the transactions that they're listing
21 here.

22 You can - if it were otherwise, it would be the
23 case, I believe, that there'd be no distinction between
24 the maintenance of an account and a use account. It's
25 hard to imagine that anybody has a correspondent account

and doesn't use it. So the question is what is it using it for? What is the transaction? And that is where I think their case falls apart, and it is rather interesting if, and I think plaintiffs understand this because, quite frankly, if they had 110 transactions that really stood for what they would like to report in court today, then I'm not sure why we're going through seven more subpoenas to a whole bunch of banks or what further evidence they need other than what they have today.

So now let me turn to the rest of the - if I've answered that question.

THE COURT: Well, let me stop you for one second --

MR. SIEGFRIED: Sure.

THE COURT: -- because there's - I see here, looks like four transactions through New York in CAB's New York correspondent accounts involving use of Al-Hayek. If the court - so the ones from Bank One, from Texas, there's a bunch of those, and that's Holy Land Foundation was founded out of Texas. So I guess my question is sort of a do you, is it your position that if anything that the jurisdiction would be, or venue would be appropriate in Texas versus New York, assuming there was jurisdiction, assuming jurisdiction was established

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2 through this correspondent bank accounts, how does that
3 impact where this case is being litigated now?

4 MR. SIEGFRIED: It's --

5 THE COURT: Right? Because there's four New
6 York and there's a lot of Texas. So, and if it were, if
7 Texas were appropriate, do you want to be there versus is
8 this a more convenient venue for everyone? I mean how
9 does that factor into the analysis?

10 MR. SIEGFRIED: I would say New York is not a
11 convenient factor nor is Texas for purposes of a foreign
12 bank, and I'd rather, instead of responding off the cuff
13 to your comment, come back to you on it.

14 THE COURT: Okay.

15 MR. SIEGFRIED: But I think that, I don't think
16 we really get there because whether we talk about, as I
17 said, those Hayek transactions, which I cannot believe
18 ultimately you will find differently than Judge Komitee
19 has, or with respect to these Bank One transactions which
20 also have issues around them, quite frankly, separate and
21 apart from their use. I don't think we're going to end
22 up reaching that issue. I just don't think they're
23 jurisdictionally sufficient either for purposes of Texas
24 or for New York, quite frankly.

25 THE COURT: Okay. You can address the

1 remaining issues.

2
3 MR. SIEGFRIED: Okay, thank you. And, by the
4 way, I should add, Your Honor, or maybe the last point I
5 should make is we did have a meet and confer with Mr.
6 Osen in which he said, well, we'd like you to confirm the
7 content of the transactions, and, frankly, I'll have that
8 conversation further with him offline. I don't actually
9 understand the question, what the content of the
10 transaction is.

11 THE COURT: Well, I assume they want to know do
12 you dispute that these transactions actually occurred
13 with these parties on these dates.

14 MR. SIEGFRIED: If that's what they're asking
15 now, it has its own set of issues. So we'll have that
16 discussion with them.

17 With respect to the subpoenas, you know, at the
18 August 25 hearing, you set the deadline of November 4,
19 and you said I want you to really focus on the
20 jurisdictional issues. And Mr. Osen said in response,
21 well, with respect to jurisdictional discovery, the
22 deadline for third-party banks, we'll obviously abide by
23 that. You asked for the status of discovery at that
24 point, he gave you the status of discovery, there was not
25 a word mentioned about, oh, we want to issue more

subpoenas. There wasn't - then we have somewhere between, somewhere in the middle of September to late September, I'm not even sure they say they served them during that period. I know that the subpoenas are dated. But supposedly they served something knowing what your discovery deadline was, and these subpoenaed banks are not any of the correspondent banks in New York. They're not referred to in the complaint which identified the correspondent accounts. So this is - so we have subpoenas going out to seven banks, close to within a month or so of your discovery deadline, to banks which, with whom we do not have any correspondent account in New York. And the subpoenas, as I read them, are for in each case 23 years of records and for 74 or more individuals and entities, notwithstanding the fact that the complaint that is before us talks about five individuals and 16 --

THE COURT: So the subpoenas are covering more than what's mentioned in the complaint?

MR. SIEGFRIED: Absolutely, and, Your Honor, if you look at the joint status report, what you see in the plaintiff's section is that, I think the term they use is BNY, Bank of New York, has balked at the request for 23 years of, I don't know whether they say the 23 years, but balked at the request, that they rejected multiple

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2 compromises, and they only hope that it can be resolved
3 without judicial intervention.

4 In the meet and confer I asked Mr. Osen whether
5 the Bank of New York had any position as to whether it
6 even had documents going back to the relevant time
7 period, and I believe he told me that at least for the
8 Bank of New York, he said we don't even know that we have
9 them going back that far. Citibank had no documents,
10 none, zero, there's none produced by them. And Standard
11 Charter, the earliest document that they have that
12 involves CAB, a CAB transfer, is 2005.

13 So the idea that seven subpoenas are now going
14 out for this breadth, one thing for sure, if Your Honor
15 is inclined to let this part of it go forward and to
16 extend on this basis, we certainly don't want to be back
17 here in 30 days, 60 days, or 90 days hearing that there
18 are yet another six subpoenas or that we are still in
19 negotiation trying to get records from banks over a 23-
20 year period, etc.

21 And that's relevant to another point regarding
22 this chart and to what's happened today. There was a,
23 what seems to have happened with some of these banks, it
24 happened with Standard Charter, happened with HSBC with
25 whom also CAB had no correspondent account, is when they

get the subpoena, which, yes, it says transactions with CAB, then has a list of 74 individuals for 23 years. As a practical matter, I think we all know what the bank does. It takes the list, the exhibit B list and it produces documents, transactions involving where those identified entities appear. So for HSBC which did something like five productions over the last couple of months, and produced a lot of documents, not a single one refers to CAB.

So this subpoena of the seven banks seems to be, as a reason for extension, seems to rest on a rather thin reed. Again, we want to get past this discovery, we want to get this motion, we think it's a good motion based upon everything we've seen. So if Your Honor's inclined to give them some leeway, we understand, but we certainly - this starts to become a real stretch late in the game to try to develop evidence.

On the - with respect to the 30(b)(6), again, I thought we had a very practical conversation in the meet and confer with Mr. Osen who, in all fairness, was the only one who spoke at the meet and confer, but it's curious because you had directed that we provide plaintiffs with a letter regarding the sale of the branches --

THE COURT: Yes.

MR. SIEGFRIED: -- regarding the IT platforms.

I think at one point there was an exchange where you asked Mr. Osen something to the effect of and what is the source codes or what's the operating systems going to have to do with all of this. But we provided that information. We provided that information, as Mr. Osen acknowledged last time, back in July about the sale, about the fact we didn't have transaction records, with respect to the system. It wasn't terribly vague. It said the bank is currently using Temenos, T-E-M-E-N-O-S, T24 Core Banking System under IBM UNIX OS. The system was implemented during the period 2011 to 2013. The prior operating system was the Kindle Banking System. The bank cancelled the license in 2013. The Kindle System is not supported anymore nor is the associated OS and hardware.

Now, that's on July 29 they had that information. On Sunday evening, October, if I'm off by a date, October 7 or 8, Sunday evening, they serve a 30(b)(6) deposition notice. Between July and October there is no follow-up, there's no request for any documents relating to those issues. And I asked Mr. Osen, number one, why would this be an efficient way to

1
2 proceed. I said if I come in with a 30(b)(6) witness in
3 2022 about a system that hasn't been in effect since
4 2013, regarding documents that are no longer retained,
5 that's not supported, that was a licensed system, and the
6 witness says what do you want me to tell you, I said then
7 you're going to tell me I gave you the wrong 30(b)(6)
8 witness.

9 THE COURT: Well --

10 MR. SIEGFRIED: So the point is, I said why
11 don't we - and I can't even tell you that we have the
12 documents, right, this is, again, a conversation that
13 occurred at the end of last week. If we had the
14 documents, we'll give them to him --

15 THE COURT: Right.

16 MR. SIEGFRIED: -- and if he wants to go run
17 off to some expert and ask some expert, well, if that's
18 what they had and it was under a license and they no
19 longer have the thing, can you, I don't know what you can
20 do, but in any event somebody wants to say they think
21 they want to revive a system that's no longer there --

22 THE COURT: You already confirmed that the data
23 from the relevant time period was not transferred --

24 MR. SIEGFRIED: Absolutely.

25 THE COURT: -- from Kindle to your system, the

1
2 current system, is that correct?

3 MR. SIEGFRIED: Yes.

4 THE COURT: Okay, so what I'm hearing gives me
5 concern, Mr. Radine, that what you're doing is outside of
6 the scope of Rule 26(b) which confines discovery to
7 information that's relevant to the claims and defenses
8 and proportional to the needs of the case. Why would you
9 be subpoenaing banks that, you know, with which CAB
10 didn't have correspondent bank accounts? That doesn't
11 make any sense.

12 And further why would CAB have knowledge about
13 the Kindle system? Wouldn't the appropriate inquiry be
14 of Kindle if it even still exists as to what's going on
15 with its system and did it ever retain any information?
16 I doubt that it would've retained sensitive banking
17 information. I doubt that the bank, any bank would allow
18 that. But isn't a proper inquiry of Kindle rather than
19 CAB since it was merely licensing that program? I'm not
20 really understanding what you're doing or looking for or
21 why this is relevant to jurisdiction.

22 MR. RADINE: Sure, well, I'll take those in
23 parts. I'll start with the banks. Right, those are not
24 CAB's correspondent banks. Those are the banks that are
25 on the other side of the transaction. Every --

THE COURT: Other side of what transaction? It seems like a fishing expedition, that you're just subpoenaing random banks with which CAB doesn't have any existing relationships to see, hey, did you ever have any kind of transaction that somehow made its way to CAB? I mean how is that going to jurisdiction?

MR. RADINE: Sure. So this chart, Your Honor, is consisting entirely of records produced by banks that they don't have a correspondent banking relationship with CAB except for the nested account at Arab Bank.

THE COURT: Right, but this is - what defendant is saying is this is not even helping you. It doesn't even have New York except for these four transactions with use of Al-Hayek.

MR. RADINE: I'm at a little bit of a loss as to what that means. So, again, just to walk through how this works. The - so let's look at the direct transfers that start on page 1, go to page 2. So the column, so the beneficiary bank in these is Cairo Amman Bank. You can see that in that column. And the beneficiary's correspondent bank is in the first column on page 2, 4, and 6. So in every --

THE COURT: Well, 1 of 6 goes with 2 of 6, is that right?

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PROCEEDINGS

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MR. RADINE: Correct, so --

THE COURT: And so the originating bank we have, let's just take Holy Land Foundation with Texas because that's at least in the United States as opposed to the U.K. Okay? So the originating bank says Bank One Texas.

MR. RADINE: Right.

THE COURT: And then there's a blank for originator's correspondent bank.

MR. RADINE: Right.

THE COURT: And then - I'm just looking at the third line on page 1, and that says the beneficiary party is the Halul Zakat Committee, and the beneficiary bank is CAB. So that's, CAB didn't, as I understand it, didn't originate this transaction. It received money from Holy Land Foundation that was deposited into the account of its customer Halul Zakat Committee. Is that how I'm to interpret this?

MR. RADINE: Yes.

THE COURT: Okay.

MR. RADINE: So --

THE COURT: And there's no intermediary --

MR. RADINE: No.

THE COURT: -- bank listed for this. Where is

1
2 New York in this picture?

3 MR. RADINE: That is in column, the first
4 column on page 2. That is the, if you look at the column
5 name, beneficiary's correspondent bank, it's beneficiary
6 bank's correspondent bank. I believe that's clear --

7 THE COURT: Well, okay, so I don't think
8 there's a dispute that CAB had a correspondent account
9 with Citi. But this transaction - is this - I don't
10 understand this transaction to have gone through Citi.
11 Are you saying that it did go through Citi?

12 MR. RADINE: Yes --

13 THE COURT: You're saying that - are you saying
14 that Bank One in Texas transferred the money to Citi in
15 New York, then transferred the money to CAB in wherever
16 this was, Lebanon or Israel or some place, where?

17 MR. RADINE: Yeah. There's not a word on this
18 that's our assumption. The bank would've done it through
19 their correspondent account. That means on the face of
20 the transfer record that we have that it says Citibank
21 New York for further credit of Cairo Amman Bank, Hebron,
22 etc. That's true for every single one of these
23 transactions. In fact, it's wherever a document might be
24 missing a piece of information, we might have a blank,
25 but in every instance these are coming through the

1
2 Citibank account. That's in the beneficiary's
3 correspondent bank column, in every single instance.
4 Some of them are through Amex in New York.

5 THE COURT: So the - so Holy Land Foundation
6 says, hey, we want to send money to Halul Zakat
7 Committee, and they say, well, our account is at CAB in
8 Lebanon, and so NatWest initiates it and it gets
9 deposited. And what I'm hearing CAB say is how is it
10 engaging in anything volitional I guess, simply receiving
11 the money through this mechanism.

12 MR. RADINE: Yes, Your Honor already ruled on
13 that issue --

14 THE COURT: Right.

15 MR. RADINE: -- and held correctly that under
16 Arcapita and Amigo Foods receiving a transaction rather
17 than rejecting it qualifies as volitional for personal
18 jurisdiction purposes.

19 All of the transactions, including all the
20 NatWest ones, I don't know why he's suggesting otherwise,
21 went through New York. Again, you can see the NatWest
22 ones because they say NatWest in the originator bank, and
23 then if you look at the corresponding row in the
24 beneficiary's correspondent bank where it says Citi
25 throughout, that's not an assumption we're making. We're

1 PROCEEDINGS 32

2 taking that off of the transaction records we have.

3 THE COURT: I see, so --

4 (interposing)

5 THE COURT: So for the U.K., just taking the
6 first, well, just taking the first NatWest Interpal
7 transaction, so NatWest in the U.K., Interpal says we
8 want to give money to the Beit Fajjar's Zakat Committee -
9 -

10 MR. RADINE: Yes.

11 THE COURT: So they, NatWest then goes through
12 NatWest U.K. --

13 MR. RADINE: Well, they had a branch in New
14 York which is why I think it's not listed. So they
15 would've cleared it themselves through New York. They
16 would transfer it across the books of the Federal Reserve
17 Bank in New York --

18 THE COURT: Oh, because it was U.S. dollar
19 transaction --

20 MR. RADINE: Correct.

21 THE COURT: -- they go through their own U.S.
22 account and then switch it to Citi. Oh, no, here they
23 switch it to Amex Bank.

24 MR. RADINE: Yes.

25 THE COURT: And then to CAB where the recipient

1 has the account.

2 MR. RADINE: Correct. This is the same
3 structure as in *Licci*, precisely. In fact, Amex is the
4 exact correspondent bank in *Licci*.
5

6 MR. SIEGFRIED: Your Honor, may I jump in for
7 one second --

8 THE COURT: Yes.

9 MR. SIEGFRIED: -- because it's relevant to
10 your question.

11 THE COURT: Yes.

12 MR. SIEGFRIED: We didn't have a correspondent
13 account at Amex. So the very first example that you're
14 using is NatWest has actually - I'll back up for one
15 second and try not to get into merits of the argument.
16 But NatWest either chose, for whatever reason, to send
17 the transfer through Amex, fine, but that has nothing to
18 do with us, or sometimes, Your Honor, under the system
19 that actually happens under Swift, the bank, as I think
20 you probably know, doesn't even make the originating
21 bank, NatWest in this case, for an Interpal transaction,
22 doesn't even make the decision. It puts it into Swift,
23 and the Swift computers do whatever they do --

24 THE COURT: System just does its stuff.

25 MR. SIEGFRIED: -- and they send something

1
2 through. So I don't see how that gets to be the
3 volitional use of a correspondent, of its correspondent
4 account in New York.

5 THE COURT: But you did have a correspondent
6 account with Citi.

7 MR. SIEGFRIED: We did have a correspondent
8 account with Citi, but I think the way we got into this
9 line of questioning was you posed a simple question which
10 is with respect to these seven new subpoenas that they
11 want to serve which are not to the CAB correspondent
12 banks, what is the relevance of that, why is that a Rule
13 26(b) request --

14 THE COURT: Right, right.

15 MR. SIEGFRIED: -- and I'm actually not sure I
16 heard the answer to that question.

17 THE COURT: Yes, well, let's go back to that,
18 Mr. Radine, what is the relevance?

19 MR. RADINE: Sorry, if I just - I want a, just
20 a clean record. A bank can't force a transaction through
21 an intermediate bank that doesn't have a correspondent
22 relationship. Of these seven transactions with Amex - I
23 don't know sitting here, the story, what appears to be
24 the case is they did have a correspondent account with
25 that bank. Sitting here I don't know. We're pulling

1
2 this from the face of the transaction. We've been
3 through the - that's not something I think is
4 controversial or obviously --

5 THE COURT: Well, it is because CAB is saying
6 they didn't have a correspondent bank with, they didn't
7 have a correspondent banking relationship with Amex or
8 here's Bank of New York --

9 MR. RADINE: Bank of New York I think they
10 concede. But, Your Honor, this sounds like grounds all
11 the more to have a 30(b)(6) because they're denying
12 having an account that we have on paper. They're denying
13 it here in court. It's not under oath. It's a great
14 question to ask them in a 30(b)(6) context.

15 THE COURT: Okay, but that answers the question
16 about why you might want to have a 30(b)(6), you might
17 want to have a witness explain what the different
18 relationships were, but that doesn't go to the subpoenas
19 onto these other banks.

20 MR. RADINE: So these are banks that we
21 understand would be likely on the other side of the
22 transactions because they are, for instance, either the
23 biggest players in the markets where a lot of these Hamas
24 affiliated entities are or because we have other records
25 that have attached them to entities like that. They have

1 not moved, of course, to quash.

2 THE COURT: So you're trying to get reverse
3 information essentially.

4 MR. RADINE: Sure, this whole chart --

5 THE COURT: These other banks - so these other
6 - you are speculating that these other banks have
7 accounts with Hamas entities, not all of which are even
8 listed in your complaint, and those entities might have
9 asked their banks to send money to somebody who had an
10 account with Cairo Amman Bank. So it sounds like a
11 fishing expedition is really what it sounds like.

12 MR. RADINE: Or they're the correspondent bank
13 for - they don't have to have the accounts themselves.
14 They can also be in a correspondent position. These
15 banks have New York branches which is why --

16 THE COURT: But you don't know, as you sit here
17 today, whether - you don't know who the customers of
18 these subpoena recipients are or whether they ever
19 initiated a banking transaction that went to a customer
20 of CAB. You don't even know that.

21 MR. RADINE: But these banks are the choke
22 points essentially, rather than, for instance,
23 subpoenaing all 10,000 banks in Germany, you have
24 Commerzbank, the largest sort of clearing bank for
25

1
2 Germany, and I believe we recently got a transaction hit
3 on that. So so far it's been productive.

4 THE COURT: You got one hit out of how many
5 subpoenas and how many records and years? I mean this is
6 really excessive it seems, and really how are you going
7 to demonstrate jurisdiction through this?

8 MR. RADINE: I'm not sure how it's to the
9 defendant's prejudice that we reach out with subpoenas.
10 They've produced nothing --

11 THE COURT: Well, the prejudice is they keep
12 coming into court. They're waiting to brief the
13 jurisdictional issue on the merits as opposed to under a
14 Rule 12 standard, and they're spending attorney's fees
15 involving this, and then they're going to have to prepare
16 a witness for a 30(b)(6) deposition on a topic that it
17 seems, I don't know understand why they would have any
18 knowledge of it at all. Why would they have knowledge on
19 this other company's system that they no longer use?

20 MR. RADINE: I'll turn to the 30(b)(6) thing.
21 My understanding is, first, a party can't object to the
22 relevance of a subpoena. That's something that the
23 subpoena recipient --

24 THE COURT: Well, that is true, but at the same
25 time you're asking for an extension of discovery based on

1
2 that, and you are bound by Rule 26(g) and 26(b) to seek
3 discovery that is consistent with the rules relevant to
4 the claims and defenses and proportional to the needs of
5 the case. So, yes, that is true that CAB may not have
6 standing to object on relevance grounds, but you as an
7 officer of the court have an obligation to utilize the
8 Federal Rules consistent with what they say.

9 MR. RADINE: So far, Your Honor, we have only
10 gotten records from third-party banks that don't have a
11 correspondent relationship with CAB. If we didn't have
12 access to records like those, we'd be at zero instead of
13 101 on this list right here. We are meeting and
14 conferring with those banks, we take their objections
15 seriously, and work on narrowing the subpoena with each
16 of them. They're obviously free to move to quash, but so
17 far we've had productive conversations with them, and
18 some of them have been producing already, some are still
19 working on it, as he mentioned, Standard Chartered Bank,
20 which, by the way, owned Amex or now owns Amex Bank,
21 (indiscernible) that bank, produced records that went
22 back to '05. We're obviously asking them to look back
23 further.

24 I don't think with the defendant producing
25 nothing that we shouldn't be allowed to reach out to

1 banks that we have at least a reason to believe can run a
2 search --

3
4 THE COURT: What is the reasonable belief? It
5 sounds - you're not even including entities that are
6 mentioned in the complaint.

7 MR. RADINE: The company, Your Honor, I --

8 THE COURT: It's really speculation. Has
9 somebody told you, oh, Standard Chartered has an account
10 with this particular entity that's listed in the
11 complaint, has somebody told you that?

12 MR. RADINE: They're likely to be - well,
13 they're likely to be, to have the role rather of a
14 correspondent bank. We subpoenaed their New York
15 branches for each of these banks rather than casting
16 about around the world. There's only so many banks which
17 do dollar clearing at all, and any transaction from
18 around the world that comes through their bank for dollar
19 clearing is something that they would have a record of or
20 at least would have had a record of at the time. So --

21 THE COURT: Yes, that may all be true, but it
22 is still speculation that you're going to have a hit on
23 anything that is relevant.

24 MR. RADINE: And as for the list - well, I
25 think, Your Honor, that we are, again, targeting a

1 limited set of banks that we think have the most
2 likelihood of being in that position. Obviously, the
3 names are names that we understand as Hamas customers and
4 entities. We didn't understand the complaint has a
5 necessity to be a directory of every Hamas operative or
6 entity. That's something that expands during discovery
7 that we are seeking with those banks.

8
9 If I could turn to the deposition --

10 MR. SIEGFRIED: Your Honor, sorry, can I jump
11 in on that for a moment? Apart from everything you've
12 just said, the last statement is an extraordinary
13 statement. So your - we are arguing or will be arguing
14 that the Court doesn't have personal jurisdiction with
15 respect to the claims asserted in the complaint. This
16 was no tiny complaint. This was a very long complaint
17 which listed five individuals, sixteen or seventeen
18 entities, a lot of detail about it. And now the argument
19 is, well, we think there may be some banks out there, we
20 know they're not the correspondent accounts, they may
21 have had customers or sent money to 70 some odd other
22 individuals, and maybe we'll find a hit that actually
23 went through CAB. And then what? So they did a transfer
24 to somebody who's not even in the complaint. So now
25 they're going to argue, well, that's a Hamas person and,

1
2 therefore, there's jurisdiction even though those persons
3 and entities aren't referenced in the complaint.

4 And this is all coming, we haven't heard, A,
5 when they, whether they even effected the service. This
6 is all coming close to your discovery deadline when they
7 said they would abide by the discovery deadline. And it,
8 you know, I don't normally want to use the word fishing
9 expedition, I'm glad that you did, in this circumstance,
10 but this is the problem, and, again, when we get into
11 this chart eventually, you'll see that, I mean there are
12 transfers to entities that they refer to aren't, again,
13 aren't in the complaint.

14 So I understand they want to use the
15 jurisdictional discovery to do all kinds of things, but
16 that's not what this is about. The 30(b)(6), again, what
17 I said, I'm not even sure why that's a 30(b)(6). If what
18 they want is a representation or a statement as to who
19 the correspondent accounts were, we could do that. That
20 hardly requires a 30(b)(6) deposition to do that.
21 Actually, Mr. Osen said I will work with you efficiently
22 on that.

23 But I think you're getting a sense of the
24 problem that we have. This is costly, this is, we're not
25 the ones who brought an action 22 years after the events.

1
2 They're stuck with the fact that having waited so long,
3 these banks don't have records --

4 THE COURT: Well, to be fair, the law changed,
5 and --

6 MR. SIEGFRIED: And it's within --

7 THE COURT: -- allowed the aiding and abetting
8 claim.

9 MR. SIEGFRIED: It does, but to be equally
10 fair, these plaintiffs, it's not just any plaintiff,
11 these plaintiffs sued Arab Bank, they sued NatWest, they
12 sued Credit Lyonnais. It's the same plaintiffs, the same
13 claims, the same attacks, the same injuries. They just
14 discovered 20 years after the fact CAB?

15 So they get the discovery, they have their
16 complaint. But it has to be - this is why we're pushing
17 back. Again, we want to be reasonable, but we don't want
18 to be doing this months and months. And there's an
19 additional prejudice, as I said, which is it is costly
20 because when they go and they subpoena somebody like
21 HSBC, as I used as an example before, HSBC produces
22 thousands of pages of documents which we then have to
23 review.

24 THE COURT: Right.

25 MR. SIEGFRIED: And for nothing, for zero, zero

1 transactions.

2
3 THE COURT: Well, it seems to me that there's
4 really not a basis to extend discovery by 90 days. I'll
5 extend discovery to December 9. And if you are seeking
6 to move to compel compliance with these subpoenas, those
7 have to be filed in November by November 11, any motions
8 to compel.

9 MR. RADINE: Okay. Did Your Honor want to be
10 address the 30(b)(6) statements discussion?

11 THE COURT: Well, for the 30(b)(6) you all
12 still have to meet and confer. It sounds like you're not
13 done with that process from what I've heard, and I
14 understand why you may want some testimony about exactly
15 how the correspondent banking relationship worked, have
16 something under oath about what were the correspondent
17 banking relationships at the relevant time period. So I
18 understand that, but it seems to me that you can further
19 meet and confer on that.

20 MR. RADINE: That's fine. We heard a number of
21 inaccuracies about the description of the IT systems and
22 so on, but that can be the subject of the meet and confer
23 process.

24 THE COURT: Yeah, I'm not limiting right now
25 the 30(b)(6) topics. I'm just expressing some skepticism

1
2 about the need for some of the topics, but you should
3 still meet and confer on those. Because it seems to me
4 there's a real question of what was happening with some
5 of these transactions that you're listing here. I mean
6 how many of these transactions even involve entities
7 listed in the complaint?

8 MR. RADINE: I believe this list should
9 correspond to the complaint. I don't --

10 THE COURT: Obviously, I recognize some of the
11 names.

12 MR. RADINE: Yeah, I mean Holy Land Foundation
13 is on most of, a lot of these. Interpal is on a lot. I
14 think there'd be very few that aren't.

15 THE COURT: Right, but the point is what does
16 CAB have to do with it? So what if Holy Land Foundation
17 has an account with Bank One in Texas? What does that
18 have to do with CAB? The question is is it going to, in
19 these transactions, is it going to a CAB client that is
20 mentioned in the complaint? That would be relevant. So
21 my question is really the beneficiary parties because
22 that's what we're looking at here, what the beneficiary
23 parties, how many of these are named in the complaint?
24 Has anybody taken stock of that?

25 MR. RADINE: Sure. I can tell you I see mostly

1 look in the beneficiary column, Your Honor, I see, again,
2 mostly, a lot of Holy Land Foundation. The Zakat
3 Committees were all in the complaint, I'm sure of that.
4 Taha's in the complaint, Mohamed Salah Taha is in the
5 complaint. So I don't see, excuse me, any, yeah, I don't
6 know about every single one, but it looks like the
7 overwhelming - Al-Mujama is the central headquarters
8 institution of Hamas. So I think that would certainly
9 qualify. WAMY is in the complaint. I don't see any that
10 aren't, which isn't to say my eyes aren't skipping over
11 one looking at this list now, and obviously I don't
12 understand the law to suggest that evidence that's
13 outside the complaint isn't sufficient on summary
14 judgment. Discovery often will --

16 THE COURT: Well, it has to be - discovery has
17 to be relevant to the claims and defenses, and so, yes,
18 discovery may involve information that's not included,
19 facts that are not included in the complaint, but they
20 still have to be facts relevant to the claims and
21 defenses. So that's the limitation.

22 MR. SIEGFRIED: I might be able to help Mr.
23 Radine out with his eyes on page 2 which is going no
24 further than page 2. The Halul Zakat Committee is not
25 mentioned in the complaint. The Silwad Municipality is

1 not mentioned in the complaint --

2 THE COURT: Okay. Well, there's some and
3 there's some not. Okay.

4 MR. SIEGFRIED: Exactly.

5 THE COURT: So this is supposed to be related
6 to jurisdiction as opposed to this general awareness
7 which may potentially be slightly broader, and that's
8 what you're, that's the - so it sounds to me like maybe
9 some of these subpoenas are going beyond jurisdictional
10 discovery and going into potentially this general
11 awareness element. There's some argument that you don't
12 want to subpoena banks twice if they're going to look for
13 documents. At the same time it seems like they're quite
14 broad.

15 I'm going to direct you to meet and confer on
16 the Rule 30(b)(6). I'm not going to extend
17 jurisdictional discovery any further beyond the December
18 11 date.

19 MR. RADINE: December 11?

20 THE COURT: Isn't that what I said?

21 ATTORNEY: December 9.

22 THE COURT: December 9, sorry. November 11 is
23 the date for any motions to compel. And I'll issue an
24 order with that revised schedule. Are there other items
25

1
2 that plaintiffs wanted to raise today?

3 MR. RADINE: I believe that is it for us, Your
4 Honor.

5 THE COURT: Anything else defense counsel would
6 like to raise? Yes.

7 MR. SIEGFRIED: The one item that you didn't
8 touch upon, but I mention it not for purposes of a ruling
9 because it falls under the meet and confer issue that Mr.
10 Osen and I agreed to have, but which Mr. Radine also
11 raised at least tangentially today, regarding witnesses.
12 I asked Mr. Osen, since he has the burden of proof once
13 you have jurisdictional discovery. To make out his
14 jurisdictional argument, I asked him whether he saw this
15 as a documents case and then the law as applied to the
16 documents, or whether he saw this as a case in which he
17 would require, in which he anticipated or potentially
18 anticipated using witness testimony, whether it's by
19 affidavit, deposition, whatever.

20 And when I first raised it several weeks ago or
21 over a month ago, He said he hadn't really given it any
22 thought, let him think about it, he understood the issue.
23 When we had the meet and confer, I raised it again
24 because we had received a letter in the interim that,
25 well, we don't know what to put in until we see your

1 papers, and we wrote back you have the burden of proof.
2 It's not a question of what we put in; it's a question of
3 what, because we have the right to depose a person if
4 you're planning to call a witness. And it's your burden.
5 You're going to set forth the facts that you think are
6 relevant and why you think any transactions that the bank
7 may have engaged in through New York relate to, or that
8 your claims arise or relate to those transactions.
9

10 So we in the meet and confer, I think Mr. Osen
11 said he was inclined to believe that this was going to be
12 a documents and law case, that's fine. We agreed to talk
13 about it further. But I just wanted to put that on your
14 radar because clearly if we don't have an agreement about
15 that, I don't think this is all about hiding the ball.
16 This is about --

17 THE COURT: No, you have to have an exchange of
18 information and perhaps there's going to be testimony
19 from a 30(b)(6) witness about some of these transactions
20 on the sheet or, I don't know, maybe somebody from one of
21 these banks. I assume there's no dispute that these are
22 authentic records produced by the bank or the bank will
23 say these are real records that they have, but you may
24 dispute the, what they mean. But that would be the
25 subject of testimony potentially, how they are

1
2 interpreted.

3 Okay, well, I'm --

4 MR. SIEGFRIED: I don't think there's an
5 authentication issue with respect to anything that's been
6 subpoenaed.

7 THE COURT: Yes, right.

8 MR. SIEGFRIED: But --

9 THE COURT: Okay, so I'm just going to put a
10 pin on that and ask you to meet and confer, and I think
11 we do have a date for a next conference. Is that right,
12 Chris? We do, okay. All right, well, have a Happy
13 Halloween, everyone. Nice to see you. We're adjourned.

14 MR. SIEGFRIED: Thank you, Your Honor.

15 THE CLERK: November 15.

16 THE COURT: November 15, okay, well, then
17 that's good because if there's any motions to compel,
18 we'll know. You can invite the banks to that, if there
19 are any motions to compel, you can invite the banks to
20 that conference. Okay? Thank you.

21 (Whereupon the matter was adjourned to November
22 15, 2022.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Averbach, et al. versus Cairo Amman Bank, Docket #19cv0004, was prepared using digital electronic transcription equipment and is a true and accurate record of the proceedings.

Signature _____

CAROLE LUDWIG

Date: October 26, 2022

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
AVERBACH, et al., : Docket #19cv0004
 : 19-cv-00004-GHW-KHP
 :
 Plaintiffs, :
 :
 - against - :
 :
 CAIRO AMMAN BANK, : New York, New York
 : October 25, 2022
 Defendant. :
 :
 ----- :

PROCEEDINGS BEFORE
THE HONORABLE KATHARINE H. PARKER,
UNITED STATES MAGISTRATE JUDGE

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Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
None				

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

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THE CLERK: Calling case 19cv004, Averbach versus Cairo Amman Bank. Beginning with the counsel for the plaintiffs, please make your appearance for the record.

MR. MICHAEL RADINE: Good morning, Your Honor, I'm ~~Mike~~ Michael Radine for the plaintiffs. Do you mind if I sit to speak?

THE COURT: No, go right ahead.

MR. RADINE: Thank you. I'm joined by Dina Gielchinsky and Ari Ungar.

THE COURT: Hi, nice to see you.

MR. RADINE: Nice to see you, Your Honor.

THE CLERK: And counsel for the defendants, please make your appearance for the record.

MR. JONATHAN SIEGFRIED: Good morning, Your Honor, Jonathan Siegfried, Andrew Peck, Erin Collins, and Margaret Civetta.

THE COURT: Nice to see everyone. Thank you for coming in on this rainy day, and I have your status letter from October 20. I thought we could go over some of the issues in more detail. The bank has been strongly contesting the basis for jurisdiction, and it seems from the letter that plaintiffs believe that the evidence exchanged thus far supports jurisdiction, but I'd like to

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hear a little bit more on that.

MR. RADINE: Sure, so, well, I can start there. What we've produced to them so far is 118 transactions, our records evidencing those transactions, and then we have about a dozen more that we located that we have informed them ~~of~~ that we are processing to give them shortly, in the next day or so. Of those 118, 101 of those are direct transactions that Cairo Amman Bank processed through its correspondent account at Citibank ~~in~~ New York, and 17 are transactions that appear to have been processed through a nested account they held at ~~Arabour Bank~~ where ~~Arabour Bank~~ uses its correspondent account in New York to process the transaction.

That structure of using a nested account to process a transaction through New York, the jurisdictional relevance of that structure is currently sub judice before the Second Circuit in *Spetner v. Palestine Investment Bank* as to whether that meets the ~~Licci~~ standard given that another bank is interposed in that flow.

But, again, of the 118 we've produced so far, that constitutes 17 of those transactions. The rest are direct transactions.

So they are transactions of significant amounts.

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We've produced a spreadsheet to them. I have a copy if
Your Honor would like to see it here.

THE COURT: Sure. If you have it, I'll take a
look.

MR. SIEGFRIED: Your Honor, we have objections
to that since we haven't actually been able to even
verify anything regarding these ~~transactions-actors~~ se transactions.

THE COURT: Okay, I mean this is not evidence,
in any case.

MR. SIEGFRIED: I understand it.

THE COURT: So I'm not taking it for any
purpose other than this conversation.

MR. SIEGFRIED: Sure.

MR. RADINE: So this is the spreadsheet we
produced to them, so it does not include the last dozen
that we've located.

THE COURT: Okay.

MR. RADINE: So the way to read this, obviously
printing Excels is always a bit of a pain.

THE COURT: Right.

MR. RADINE: It goes, if you will, to the right
and down to the right and then down to the right and then
down. So an entire row is expressed over a page and the
next page, if that makes sense.

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THE COURT: Uh huh.

MR. RADINE: So ~~o~~ⁱn the top half of the first page here we start with the nested account transactions. So you'll see there should be about 17 of them, and you have the first half of the information on page 1 and the second half on page 2. And then below that with the direct transactions, again, first half on page 1, second half on page 2, and then repeating in that pattern through the other pages.

So we've asked them if they dispute the accuracy of this, but obviously we're not asking them if they think this is jurisdictionally sufficient, just whether this reflects the evidence we've produced to them.

THE COURT: Okay.

MR. RADINE: Now, we understand from them that they do not think that transactional information is sufficient to prove personal jurisdiction on its face. They've asked us what information or evidence we intend to put in at this stage and so on. We're at a bit of a loss as ~~to~~ what that would be under ~~Li~~^{Li}~~cc~~^{cc}~~hi~~^{hi}. The evidence that relates to personal jurisdiction is transactions for, relating to the terrorist group in question from which the claims arise.

So we understand that they've argued that the

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evidence, we have not - I'll just quote so I don't misstate it - that we have, quote, "not provided evidence sufficient under the Due Process Clause," close quote, to show, quote, "that the claims in this action ~~raise~~ arise out of or relate to any transfers processed through its correspondent accounts in New York," close quote, because, they argue, last quote, "transfers involving routine banking transactions and for humanitarian services, for example, do not give rise to claims under JASTA."

So our position is that's a merits question. The law in this case, as Your Honor pointed out in two reports and recommendations, is that the Second Circuit noted that the use of a correspondent account standing alone could be grounds to find personal jurisdiction so long as the use is purposeful. That's from Your Honor's 2020 opinion.

THE COURT: Right.

MR. RADINE: And purposeful, as this Court explained, means repeated and volitional as we argued these were and I think as this chart suggests.

THE COURT: Can I ask you something about - I'm sorry to interrupt, but I'm just looking at the dates of these various transactions. Is there relevance to the

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2 dates, I mean when was, I see a bunch are Holy Land
3 Foundation, some Interpal, some others. Were any of
4 these Holy Land Foundation transactions after this
5 designation?

6 MR. RADINE: They were all after the Israeli
7 designation of Holy Land Foundation which we alleged was
8 publicized and, therefore, sufficient under *Honickman*.
9 They're not after the U.S. designation because that
10 would've prevented the correspondent banks from
11 processing these transactions.

12 THE COURT: Okay. Okay. So none of these are
13 post-U.S. designation?

14 MR. RADINE: Right, there wouldn't be U.S.
15 dollar transactions post-~~ing~~ U.S. designations. So for
16 HLF that's the end of 2001, but for Interpal, of course,
17 that's 2003. And then some entities weren't designated.

18 THE COURT: Right, but you have Interpal
19 transactions from prior to the violence at issue.

20 MR. RADINE: ~~SIEGFRIED:~~ Yeah. So anyway, the
21 personal jurisdiction, so obviously *Kaplan* and *Lindey*
22 make clear that what constitutes routine banking is for a
23 jury to decide. Whether it's knowledge is sufficiently—
24 or, general awareness is sufficiently established from a
25 humanitarian purpose of a transactions ~~and is a~~ merits

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question that we'll obviously arrive to when we get into merits discovery, but there's not been a court that's held that a defendant's knowledge has to be evident on the face of each transfer. That could be proven in any number of ways.

THE COURT: At least for jurisdiction you're saying.

MR. RADINE: At least for jurisdiction, right. So arising out of, which is their argument is on the due process version of "arising out of." There's the New York version of "arising out of" and the due process version. According to their letter, they're contesting the due process version. Of course, as this Court noted, they had not contested the New York "arising out of" version in a motion to dismiss. In any event, the Second Circuit has never, they note this in *Litchi* ~~(phonetic)~~, found a case where plaintiff satisfied the New York rule but not the due process rule.

As this Court noted, under the New York rule, quote, "the foreign bank's use of its correspondent accounts is not completely unmoored from the legal claim regardless of the ultimate merits of the claim" is the standard that Your Honor set out correctly. And then as for whether the - whether due process could operate

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2 differently, Your Honor noted, quote, "CAB offered no on-
3 point case authority supporting this argument." The
4 Second Circuit does not appear to have seen it either."
5 So we think that 's that ~~is~~ for personal jurisdiction.

6 Now, we want to come to understand more about
7 how the bank operated that we think bears on the
8 transactional element and the documents they could have,
9 and that's where the 30(b)(6) deposition notice comes in.
10 And I can speak on that briefly, Your Honor.

11 THE COURT: Yes.

12 MR. RADINE: So we've noticed three issues to
13 them. The first relates to the IT systems that the bank
14 used during the relevant period as they relate to
15 transaction processing. So they have explained to us
16 before a little bit about their understanding of their
17 systems at the time. They explained that they used the
18 Kindle Banking System in the relevant period. That's
19 been taken offline, and they don't have - the system is
20 not supported anymore nor is the associated OS and
21 hardware. And they mentioned they don't have backups and
22 archives.

23 It's been our experience working with banks in
24 these cases that what is not currently usable by the
25 bank's IT staff is not necessarily unrecoverable.

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1 Relevant data may sit on multiple systems, it may have
2 been transferred to another system, recovery may be
3 possible. It may necessitate a vendor who specializes in
4 recovery work. In any event, we won't know until we
5 ascertain what systems were used. I'd also point out
6 that that's a single system. So in our experience banks
7 use multiple systems. We've seen that the system that
8 runs the SWIFT database which its transactions are
9 processed through and other banks is not the same as
10 their core banking system which is what I believe the
11 Kindle system ~~likely~~ is. There may not be more to draw
12 from this line of inquiry, but we can't know until we
13 begin to have it.

14
15 The second issue is that of the CAB's use of
16 correspondent accounts and nested accounts. As Your
17 Honor raised at our last conference, it's worth knowing
18 how the bank used its correspondent accounts generally,
19 it gives a sense of the jurisdictional contacts they had
20 when processing the transactions. And then in the nested
21 account which is sub judice, the impact of that, in
22 Spetner, I would imagine the bank, just as much as us,
23 would like to know if CAB used its nested account in a
24 way that was similar or different than the defendant in
25 that case.

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2 THE COURT: And how did the defendant use the
3 nested account in the cases pending before the Second
4 Circuit?

5 MR. RADINE: So those transactions, when a
6 customer of the bank wants to push a transaction, they
7 will indicate who the ultimate beneficiary is. And then
8 those are instructions that the originator bank, the
9 defendant, would then give to their bank where they hold
10 their nested account for further credit down the line
11 ultimately through New York and then to the opposing
12 party, the counterparty to the transaction.

13 So in a sense that when a bank holds a
14 correspondent account in New York, when they send a
15 transaction through New York, they're providing
16 instructions to each bank down the line as to moving it
17 along. This just adds another bank. So the question
18 would be, for instance, like what control does the
19 defendant have --

20 THE COURT: Why does it go through a nested
21 account versus just going through its own, why would it
22 add a party instead of minimize the parties?

23 MR. RADINE: So --

24 THE COURT: What's the purpose of being --

25 MR. RADINE: Sure, banks hold nested accounts

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1 for different reasons. That's something we'd certainly
2 get into with them. Sometimes they're unable to hold, a
3 New York bank ~~will~~won't offer them an account or at
4 least an account with terms they want --
5

6 THE COURT: But we know that CAB did have some
7 correspondent accounts.

8 MR. RADINE: Right. It could be a legacy
9 account that they had from before they had access to New
10 York accounts that they were still using. These are all
11 things we would get into with them and see whether or not
12 that's a fruitful topic to understand.

13 The last issue relates to their sale of relevant
14 branches to Palestine Islamic Bank. They informed us
15 that whatever records were at those branches in the
16 Palestinian territories were transferred to the buyer
17 bank when they bought those branches because possession,
18 custody, and control can relate to whether or not you
19 have the right to demand records back. We just want to
20 understand what the agreement was as to those records,
21 document sharing, however that operated, whether
22 documents were transferred back to CAB at all.

23 Now, on these topics we have a corresponding set
24 of document requests, we have four document requests that
25 relate to these topics. CAB in a meet and confer told us

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1 maybe those records will answer our questions without the
2 need for deposition. We're, of course, open to that, to
3 see those records and to see if that makes sense. We
4 think we'd likely, at least from our experience ~~in~~ the
5 IT process that we've gone through with other banks, I
6 imagine we would have follow-up questions. But, of
7 course, you know, we are happy to look at the documents
8 first and talk to them about that.

9
10 THE COURT: Okay.

11 MR. RADINE: So the big takeaway, Your Honor,
12 is that between the continuing work of the banks that
13 we've issued subpoenas to and the deposition process,
14 we'd like to extend the discovery period. We propose 90
15 days in part to get us past the holidays from which we
16 imagine we'll have a little bit less responsiveness from
17 the banks and so on, and that would put us on February 2.

18 THE COURT: Right, well, we had November 14 as
19 completion of jurisdictional discovery. So you want a
20 90-day extension on that.

21 MR. RADINE: Yeah, I think November 4 is the
22 deadline, and the --

23 THE COURT: Maybe I have a typo in my notes.

24 MR. RADINE: Sure, November - so 90 days from
25 November 4 would be February 2. Of course, we don't have

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2 the Court's decision on the R&R, so our feeling is is
3 that this is time we can use productively to do this
4 work.

5 THE COURT: Okay. I'll hear from defendants
6 next about these issues and also the extension of
7 discovery.

8 MR. SIEGFRIED: Thank you, Your Honor. Dealing
9 about nesting, which is in your mind at the moment,
10 having looked at that chart, I don't want to - and you
11 also said before you're not deciding merits --

12 THE COURT: No.

13 MR. SIEGFRIED: -- at a status conference. So
14 I'm not going to argue a great deal about the merits
15 other than to note a couple of things. One, the very
16 beginning of their chart is replete with these so-called,
17 what they're now calling, nesting transfers. Now, it's
18 interesting actually because the plaintiffs like to keep
19 changing their theory in this case. First of all,
20 there's absolutely nothing in the complaint about
21 nesting. In fact, as you may recall, what we brought to
22 the Court's attention is that allegations in the
23 complaint regarding these transfers, that they were all
24 through Citibank, were incorrect when made, when the
25 complaint was drafted. And then when you inquired of Mr.

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Osen about that issue when he was here, he said, oh, well, but we're not sure because the transfer slips don't necessarily show us whether it went through Citibank, and we don't have the complete transfer slips, so it may have gone through Citibank.

I gather they've now, because they should, have retreated from that argument to now talk about it as a nesting argument. And as far as a nesting argument is concerned, Your Honor, since they raised it and since I assume it will come up again, the case is *Spetner v. Palestinian Investment Bank*, 495 F. Supp. 3d 96, a 2020 decision, in which not just any plaintiff but these ~~P~~plaintiffs represented ~~ed~~ by Mr. Osen and his firm, the same counsel that you have before you, made every conceivable argument under the sun to Judge, I think it's Komitee is, is that --

THE COURT: Who?

MR. SIEGFRIED: K-O-M-I-T-T --

THE COURT: Oh, Komitee.

MR. SIEGFRIED: Komitee. I don't know where you put the accent on that. Mad a whole bunch of arguments because the situation was even more involved than it is here. They had three different nesting theories. And he carefully reviewed each one, and he

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2 said there was no personal jurisdiction. That is the law

3 as it stands right now. Mr. Radine is correct that they

4 have appealed to the Second Circuit. Obviously, I

5 wouldn't say anything about how you might judge the

6 matter, but I think that if you read the decision, it's a

7 fairly thorough, careful, detailed decision as to why

8 that theory simply doesn't hold water.

9 THE COURT: Of course, that's only with respect

10 to 17 transactions. The other ones are through --

11 MR. SIEGFRIED: And let's go to the others.

12 THE COURT: Yeah.

13 MR. SIEGFRIED: Then we have a whole bunch of

14 NatWest transactions that, of course, didn't go through

15 New York. A lot of them are in Sterling, some of them

16 are in (indiscernible), but they're not through Citibank

17 in New York. There are --

18 THE COURT: None of these are through New York?

19 MR. SIEGFRIED: No, I'm not saying that, Your

20 Honor. I've got a large sheet here, but I think that the

21 last time we looked, they keep making ongoing

22 productions, but the last time we looked, there were

23 maybe only a couple, two or three, that went through

24 Citibank. So, again, this is why, when I objected

25 before, I said there was much to be said about this.

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2 Then we have issues regarding this contention~~r~~ by Mr.
3 Radine, by the plaintiffs, that this is somehow a merits
4 issue. Your Honor, we will have the opportunity
5 obviously to brief~~,~~ and for you to consider~~,~~ this issue,
6 but the ~~D~~ue ~~P~~rocess clause, insofar as this is
7 concerned, is not a fifth grade math class in which you
8 say how many transfers were there and, therefore, oh,
9 there must be jurisdiction. Not any transaction will do.

10 The ~~d~~ue ~~p~~rocess clause~~,~~ and every~~onethi~~ng from
11 the Supreme Court to the Second Circuit have been quite
12 clear~~,~~ that the second part of this analysis, beyond the
13 number of transfers, which may be relevant to the issue
14 of purposefulness, the main part of due process is that
15 the claim must arise out of or relate to the transaction.
16 It's the nature of the transaction that is
17 extraordinarily important, and when we get to the merits
18 of this topic, we will address it, and, indeed, I think
19 you'll see that these claims do not, cannot relate to or
20 arise out of any of the transactions that they're listing
21 here.

22 You can - if it were otherwise, it would be the
23 case, I believe, that there'd be no distinction between
24 the maintenance of an account and a use account. It's
25 hard to imagine that anybody has a correspondent account

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1 and doesn't use it. So the question is what is it using
2 it for? What is the transaction? And that is where I
3 think their case falls apart, and it is rather
4 interesting if, and I think plaintiffs understand this
5 because, quite frankly, if they had 110 transactions that
6 ~~they~~ really stood for what they would like to report in
7 court today, then I'm not sure why we're going through
8 seven more subpoenas to a whole bunch of banks or what
9 further evidence they need other than what they have
10 today.

11
12 So now let me turn to the rest of the - if I've
13 answered that question.

14 THE COURT: Well, let me stop you for one
15 second --

16 MR. SIEGFRIED: Sure.

17 THE COURT: -- because there's - I see here,
18 looks like four transactions through New York in CAB's
19 New York correspondent accounts involving use of Al-
20 Hayek ~~(phonetic)~~. If the court - so the ones from Bank
21 One, from Texas, there's a bunch of those, and that's
22 Holy Land Foundation was founded out of Texas. So I
23 guess my question is sort of a do you, is it your
24 position that if anything that the jurisdiction would be,
25 or venue would be appropriate in Texas versus New York,

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1 assuming there was jurisdiction, assuming jurisdiction
2 was established through this correspondent bank accounts,
3 how does that impact where this case is being litigated
4 now?

5
6 MR. SIEGFRIED: It's --

7 THE COURT: Right? Because there's four New
8 York and there's a lot of Texas. So, and if it were, if
9 Texas were appropriate, do you want to be there versus is
10 this a more convenient venue for everyone? I mean how
11 does that factor into the analysis?

12 MR. SIEGFRIED: I would say New York is not a
13 convenient factor nor is Texas for purposes of a foreign
14 bank, and I'd rather, instead of responding off the cuff
15 to your comment, come back to you on it.

16 THE COURT: Okay.

17 MR. SIEGFRIED: But I think that, I don't think
18 we really get there because whether we talk about, as I
19 said, those Hayek transactions, which I cannot believe
20 ultimately you will find differently than Judge Komitee
21 has, or with respect to these Bank One transactions which
22 also have issues around them, quite frankly, separate and
23 apart from their use. I don't think we're going to end
24 up reaching that issue. I just don't think they're
25 jurisdictionally sufficient either for purposes of Texas

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or for New York, quite frankly.

THE COURT: Okay. You can address the remaining issues.

MR. SIEGFRIED: Okay, thank you. And, by the way, I should add, Your Honor, or maybe the last point I should make is we did have a meet and confer with Mr. Osen in which ~~he~~they said, well, we'd like you to confirm the content of the transactions, and, frankly, I'll have that conversation further with ~~him~~them offline. I don't actually understand the question, what the content of the transaction is.

THE COURT: Well, I assume they want to know do you dispute that these transactions actually occurred with these parties on these dates.

MR. SIEGFRIED: If that's what they're asking now, ~~it~~it has its own set of issues. So we'll have that discussion with them.

With respect to the subpoenas, you know, at the August 25 hearing, you set the deadline of November 4, and you said I want you to really focus on the jurisdictional issues. And Mr. Osen said in response, well, with respect to jurisdictional discovery, the deadline for third-party banks, we'll obviously abide by that. You asked for the status of discovery at that

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1 point, he gave you the status of discovery, there was not
2 a word mentioned about, oh, we want to issue more
3 subpoenas. There wasn't - then we have somewhere
4 between, somewhere in the middle of September to late
5 September, I'm not even sure they say they served them
6 during that period. I know that the subpoenas are dated.
7 But supposedly they served something knowing what your
8 discovery deadline was, and these subpoenaed banks are
9 not any of the correspondent banks in New York. They're
10 not referred to in the complaint which identified the
11 correspondent accounts. So this is - so we have
12 subpoenas going out to seven banks, close to within a
13 month or so of your discovery deadline, to banks which,
14 with whom we do not have any correspondent account in New
15 York. And the subpoenas, as I read them, are for in each
16 case ~~are for~~ 23 years of records and for 74 or more
17 individuals and entities, notwithstanding the fact that
18 the complaint that is before us talks about five
19 individuals and 16 --

20
21 THE COURT: So the subpoenas are covering more
22 than what's mentioned in the complaint?

23 MR. SIEGFRIED: Absolutely, and, Your Honor, if
24 you look at the joint status report, what you see in the
25 plaintiff's section is that, I think the term they use is

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BNY, Bank of New York, has balked at the request for 23 years of, I don't know whether they say the 23 years, but balked at the request, that they rejected multiple compromises, and they only hope that it can be resolved without judicial intervention.

In the meet and confer I asked Mr. Osen whether the Bank of New York had any position as to whether it even had documents going back to the relevant time period, and I believe he told me that at least for the Bank of New York, he said we don't even know that we have them going back that far. Citibank had no documents, none, zero, there's none produced by them. And Standard Charter, the earliest document that they have that involves CAB, a CAB transfer, is 2005.

So the idea that seven subpoenas are now going out for this breadth, one thing for sure, if Your Honor is inclined to let this part of it go forward and to extend on this basis, we certainly don't want to be back here in 30 days, 60 days, or 90 days hearing that there are yet another six subpoenas or that we are still in negotiation trying to get records from banks over a 23-year period, etc.

And that's relevant to another point regarding this chart and to what's happened today. There was a,

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1 what seems to have happened with some of these banks, it
2 happened with Standard Charter, happened with HSBC with
3 whom also CAB had no correspondent account, is when they
4 get the subpoena, which, yes, it says transactions with
5 CAB, then has a list of 74 individuals for 23 years. As
6 a practical matter, I think we all know what the bank
7 does. It takes the list, the exhibit B list and it
8 produces documents, transactions involving where those
9 identified entities appear. So ~~for the~~ HSBC which did
10 something like five productions over the last couple of
11 months, and produced a lot of documents, not a single one
12 refers to CAB.

13
14 So this subpoena of the seven banks seems to be,
15 as a reason for extension, seems to rest on a rather thin
16 reed. Again, we want to get past this discovery, we want
17 to get this motion, we think it's a good motion based
18 upon everything we've seen. So if Your Honor's inclined
19 to give them some leeway, we understand, but we certainly
20 - this starts to become a real stretch late in the game
21 to try to develop evidence.

22 On the - with respect to the 30(b)(6), again, I
23 thought we had a very practical conversation in the meet
24 and confer with Mr. Osen who, in all fairness, was the
25 only one who spoke at the meet and confer, but it's

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2 curious because you had directed that we provide
3 plaintiffs with a letter regarding the sale of the
4 branches --

5 THE COURT: Yes.

6 MR. SIEGFRIED: -- regarding the IT platforms.
7 I think at one point there was an exchange where you
8 asked Mr. Osen something to the effect of and what is the
9 source codes or what's the operating systems going to
10 have to do with all of this. But we provided that
11 information. We provided that information, as Mr. Osen
12 acknowledged last time, back in July about the sale,
13 about the fact we didn't have transaction records, with
14 respect to the system. It wasn't terribly vague. It
15 said the bank is currently using Temenos, T-E-M-E-N-O-S,
16 T24 Core Banking System under IBM UNIX OS. The system
17 was implemented during the period 2011 to 2013. The
18 prior operating system was the Kindle Banking System.
19 The bank cancelled the license in 2013. The Kindle
20 System is not supported anymore nor is the associated OS
21 and hardware.

22 Now, that's on July 29 they had that
23 information. On Sunday evening, October, if I'm off by a
24 date, October 7 or 8, Sunday evening, they serve a
25 30(b)(6) deposition notice. Between July and October

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1 there is no follow-up, there's no request for any
2 documents relating to those issues. And I asked Mr.
3 Osen, number one, why would this be an efficient way to
4 proceed. I said if I come in with a 30(b)(6) witness in
5 2022 about a system that hasn't been in effect since
6 2013, regarding documents that are no longer retained,
7 that's not supported, that was a licensed system, and the
8 witness says what do you want me to tell you, I said then
9 you're going to tell me I gave you the wrong 30(b)(6)
10 witness.

11
12 THE COURT: Well --

13 MR. SIEGFRIED: So the point is, I said why
14 don't we - and I can't even tell you that we have the
15 documents, right, this is, again, a conversation that
16 occurred at the end of last week. If we had the
17 documents, we'll give them to him --

18 THE COURT: Right.

19 MR. SIEGFRIED: -- and if he wants to go run
20 off to some expert and ask some expert, well, if that's
21 what they had and it was under a license and they no
22 longer have the thing, can you, I don't know what you can
23 do, but in any event somebody wants to say they think
24 they want to revive a system that's no longer there --

25 THE COURT: You already confirmed that the data

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from the relevant time period was not transferred --

MR. SIEGFRIED: Absolutely.

THE COURT: -- from Kindle to your system, the current system, is that correct?

MR. SIEGFRIED: Yes.

THE COURT: Okay, so what I'm hearing gives me concern, Mr. Radine, that what you're doing is outside of the scope of Rule 26(b) which confines discovery to information that's relevant to the claims and defenses and proportional to the needs of the case. Why would you be subpoenaing banks that, you know, with which CAB didn't have correspondent bank accounts? That doesn't make any sense.

And further why would CAB have knowledge about the Kindle system? Wouldn't the appropriate inquiry be of Kindle if it even still exists as to what's going on with its system and did it ever retain any information? I doubt that it would've retained sensitive banking information. I doubt that the bank, any bank would allow that. But isn't a proper inquiry of Kindle rather than CAB since it was merely licensing that program? I'm not really understanding what you're doing or looking for or why this is relevant to jurisdiction.

MR. RADINE: Sure, well, I'll take those in

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part~~s~~. I'll start with the banks. Right, those are not CAB's correspondent banks. Those are the banks that are on the other side of the transaction. Every --

THE COURT: Other side of what transaction? It seems like a fishing expedition, that you're just subpoenaing random banks with which CAB doesn't have any existing relationships to see, hey, did you ever have any kind of transaction that somehow made its way to CAB? I mean how is that going to jurisdiction?

MR. RADINE: Sure. So this chart, Your Honor, is consisting entirely of records produced by banks that they don't have a correspondent banking relationship with CAB except for the nested account at Arab Bank.

THE COURT: Right, but this is - what defendant is saying is this is not even helping you. It doesn't even have New York except for these four transactions with use of Al-Hay~~ea~~k.

MR. RADINE: I'm ~~at in~~ a little bit of a loss as to what that means. So, again, just to ~~t~~walk through how this works. The - so let's look at the direct transfers that start on page 1, go to page 2. So the column, so the beneficiary bank in these is Cairo Amman Bank. You can see that in that column. And the beneficiary's correspondent bank is in the first column on page 2, 4,

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1 and 6. So in every --

2
3 THE COURT: Well, 1 of 6 goes with 2 of 6, is
4 that right?

5 MR. RADINE: Correct, so --

6 THE COURT: And so the originating bank we
7 have, let's just take Holy Land Foundation with Texas
8 because that's at least in the United States as opposed
9 to the U.K. Okay? So the originating bank says Bank One
10 Texas.

11 MR. RADINE: Right.

12 THE COURT: And then there's a blank for
13 originator's correspondent bank.

14 MR. RADINE: Right.

15 THE COURT: And then - I'm just looking at the
16 third line on page 1, and that says the beneficiary party
17 is the Halul Zakat Committee, and the beneficiary bank is
18 CAB. So that's, CAB didn't, as I understand it, didn't
19 originate this transaction. It received money from Holy
20 Land Foundation that was deposited into the account of
21 its customer Halul Zakat Committee. Is that how I'm to
22 interpret this?

23 MR. RADINE: Yes.

24 THE COURT: Okay.

25 MR. RADINE: So --

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THE COURT: And there's no intermediary --

MR. RADINE: No.

THE COURT: -- bank listed for this. Where is New York in this picture?

MR. RADINE: That is in column, the first column on page 2. That is the, if you look at the column name, beneficiary's correspondent bank, it's beneficiary bank's correspondent bank. I believe that's clear --

THE COURT: Well, okay, so I don't think there's a dispute that CAB had a correspondent account with Citi. But this transaction - is this - I don't understand this transaction to have gone through Citi. Are you saying that it did go through Citi?

MR. RADINE: Yes --

THE COURT: You're saying that - are you saying that Bank One in Texas transferred the money to Citi in New York, then transferred the money to CAB in wherever this was, Lebanon or Israel or some place, where?

MR. RADINE: Yeah. There's not a word on this that's our assumption. ~~I bet~~ The bank would've done it through their correspondent account. That means on the face of the transfer record that we have that it says Citibank New York for further credit of Cairo Amman Bank, Hebron, etc. That's true for every single one of these

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1 transactions. In fact, it's wherever a document might be
2 missing a piece of information, we might have a blank,
3 but in every instance these are coming through the
4 Citibank account. That's in the beneficiary's
5 correspondent bank column, in every single instance.
6 Some of them are through Amex in New York.
7

8 THE COURT: So the - so Holy Land Foundation
9 says, hey, we want to send money to Halul Zakat
10 Committee, and they say, well, our account is at CAB in
11 Lebanon, and so NatWest initiates it and it gets
12 deposited. And what I'm hearing CAB say is how is it
13 engaging in anything volitional I guess, simply receiving
14 the money through this mechanism.

15 MR. RADINE: Yes, Your Honor already ruled on
16 that issue --

17 THE COURT: Right.

18 MR. RADINE: -- and held correctly that under
19 Arcapita and Amigo Foods receiving a transaction rather
20 than rejecting it qualifies as volitional for personal
21 jurisdiction purposes.

22 All of the transactions, including all the
23 NatWest ones, I don't know why he's suggesting otherwise,
24 went through New York. Again, you can see the NatWest
25 ones because they say NatWest in the originator bank, and

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1 then if you look at the corresponding row in the
2 beneficiary's correspondent bank where it says Citi
3 throughout, that's not an assumption we're making. We're
4 taking that off of the transaction records we have.
5

6 THE COURT: I see, so --

7 (interposing)

8 THE COURT: So for the U.K., just taking the
9 first, well, just taking the first NatWest Interpal
10 transaction, so NatWest in the U.K., Interpal says we
11 want to give money to the ~~Beiate~~ Fajjar's Zakat Committee
12 --

13 MR. RADINE: Yes.

14 THE COURT: So they, NatWest then goes through
15 NatWest U.K. --

16 MR. RADINE: Well, they had a branch in New
17 York which is why I think it's not listed. So they
18 would've cleared it themselves through New York. They
19 would transfer it across the books ~~of the~~ the Federal
20 Reserve Bank in New York --

21 THE COURT: Oh, because it was U.S. dollar
22 transaction --

23 MR. RADINE: Correct.

24 THE COURT: -- they go through their own U.S.
25 account and then switch it to Citi. Oh, no, here they

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switch it to Amex Bank.

MR. RADINE: Yes.

THE COURT: And then to CAB where the recipient has the account.

MR. RADINE: Correct. This is the same structure as in *Licenci*, precisely. In fact, Amex is the exact correspondent bank in *Licenci*.

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MR. SIEGFRIED: Your Honor, may I jump in for one second --

THE COURT: Yes.

MR. SIEGFRIED: -- because it's relevant to your question.

THE COURT: Yes.

MR. SIEGFRIED: We didn't have a correspondent account at Amex. So the very first example that you're using is NatWest has actually -- I'll back up for one second and try not to get into merits of the argument. But NatWest either chose, for whatever reason, to send the transfer through Amex, fine, but that has nothing to do with us, or sometimes, Your Honor, under the system that actually happens under Swift, the bank, as I think you probably know, doesn't even make the originating bank, NatWest in this case, for an Interpal transaction, doesn't even make the decision. It puts it into Swift,

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and the Swift computers do whatever they do --

THE COURT: System just does its stuff.

MR. SIEGFRIED: -- and they send something through. So I don't see how that gets to be the volitional use of a correspondent, of its correspondent account in New York.

THE COURT: But you did have a correspondent account with Citi.

MR. SIEGFRIED: We did have a correspondent account with Citi, but I think the way we got into this line of questioning was you posed a simple question which is with respect to these seven new subpoenas that they want to serve which are not to the CAB correspondent banks, what is the relevance of that, why is that a Rule 26(b) request --

THE COURT: Right, right.

MR. SIEGFRIED: -- and I'm actually not sure I heard the answer to that question.

THE COURT: Yes, well, let's go back to that, Mr. Radine, what is the relevance?

MR. RADINE: Sorry, if I just - I want a clean just a clean record. A bank can't force a transaction through an intermediate bank that doesn't have a correspondent relationship. Of these seven transactions with Amex - I

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1 don't know sitting here, the story, what appears to be
2 the case is they did have a correspondent account with
3 that bank. Sitting here I don't know. We're pulling
4 this from the face of the transaction. We've been
5 through the - that's not something I think is
6 controversial or obviously --

8 THE COURT: Well, it is because CAB is saying
9 they didn't have a correspondent bank with, they didn't
10 have a correspondent banking relationship with Amex or
11 here's Bank of New York --

12 MR. RADINE: Bank of New York I think they
13 concede. But, Your Honor, this sounds like grounds all
14 the more to have a 30(b)(6) because they're denying
15 having an account that we have on paper. They're denying
16 it here in court. It's not under oath. It's a great
17 question to ask them in a 30(b)(6) context.

18 THE COURT: Okay, but that answers the question
19 about why you might want to have a 30(b)(6), you might
20 want to have a witness explain what the different
21 relationships were, but that doesn't go to the subpoenas
22 onto these other banks.

23 MR. RADINE: So these are banks that we
24 understand would be likely on the other side of the
25 transactions because they are, for instance, either the

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biggest players in the markets where a lot of these Hamas affiliated entities are or because we have other records that have attached them to entities like that. They have not moved, of course, to quash.

THE COURT: So you're trying to get reverse information essentially.

MR. RADINE: Sure, this whole chart --

THE COURT: These other banks - so these other - you are speculating that these other banks have accounts with Hamas entities, not all of which are even listed in your complaint, and those entities might have asked their banks to send money to somebody who had an account with Cairo Amman Bank. So it sounds like a fishing expedition is really what it sounds like.

MR. RADINE: Or they're the correspondent bank for - they don't have to have the accounts themselves. They can also be in a correspondent position. These banks have New York branches which is why --

THE COURT: But you don't know, as you sit here today, whether - you don't know who the customers of these subpoena recipients are or whether they ever initiated a banking transaction that went to a customer of CAB. You don't even know that.

MR. RADINE: But these banks are the choke

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1 points essentially, rather than, for instance,
2 subpoenaing all 10,000 banks in Germany, you have
3 Commerzbank, the largest sort of clearing bank for
4 Germany, and I believe we recently got a transaction hit
5 on that. So so far it's been productive.
6

7 THE COURT: You got one hit out of how many
8 subpoenas and how many records and years? I mean this is
9 really excessive it seems, and really how are you going
10 to demonstrate jurisdiction through this?

11 MR. RADINE: I'm not sure how it's to the
12 defendant's prejudice that we reach out with subpoenas.
13 They've produced nothing --

14 THE COURT: Well, the prejudice is they keep
15 coming into court. They're waiting to brief the
16 jurisdictional issue on the merits as opposed to under a
17 Rule 12 standard, and they're spending attorney's fees
18 involving this, and then they're going to have to prepare
19 a witness for a 30(b)(6) deposition on a topic that it
20 seems, I don't know understand why they would have any
21 knowledge of it at all. Why would they have knowledge on
22 this other company's system that they no longer use?

23 MR. RADINE: I'll turn to the 30(b)(6) thing.
24 My understanding is, first, a party can't object to the
25 relevance of a subpoena. That's something that the

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subpoena recipient --

THE COURT: Well, that is true, but at the same time you're asking for an extension of discovery based on that, and you are bound by Rule 26(g) and 26(b) to seek discovery that is consistent with the rules relevant to the claims and defenses and proportional to the needs of the case. So, yes, that is true that CAB may not have standing to object on relevance grounds, but you as an officer of the court have an obligation to utilize the Federal Rules consistent with what they say.

MR. RADINE: So far, Your Honor, we have only gotten records from third-party banks that don't have a correspondent relationship with CAB. If we didn't have access to records like those, we'd be at zero instead of 101 on this list right here. We are ~~in~~ meeting and conferring with those banks, we take their objections seriously, and work on narrowing the subpoena with each of them. They're obviously free to move to quash, but so far we've had productive conversations with them, and some of them have been producing already, some are still working on it, as he mentioned, Standard Chartered Bank, which, by the way, owned Amex or now owns Amex Bank, (indiscernible) that bank, produced records ~~that~~ went back to '05. We're obviously asking them to look back

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1 further.

2 I don't think with the defendant producing
3 nothing that we shouldn't be allowed to reach out to
4 banks that we have at least a reason to believe can run a
5 search --

6 THE COURT: What is the reasonable belief? It
7 sounds - you're not even including entities that are
8 mentioned in the complaint.

9 MR. RADINE: The company, Your Honor, I --

10 THE COURT: It's really speculation. Has
11 somebody told you, oh, Standard Chartered has an account
12 with this particular entity that's listed in the
13 complaint, has somebody told you that?

14 MR. RADINE: They're likely to be - well,
15 they're likely to be, to have the role rather of a
16 correspondent bank. We subpoenaed their New York
17 branches for each of these banks rather than casting
18 about around the world. There's only so many banks which
19 do dollar clearing at all, and any transaction from
20 around the world that comes through their bank for dollar
21 clearing is something that they would have a record of or
22 at least would have had a record of at the time. So --

23 THE COURT: Yes, that may all be true, but it
24 is still speculation that you're going to have a hit on
25

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anything that is relevant.

MR. RADINE: And as for the list - well, I think, Your Honor, that we are, again, targeting a limited set of banks that we think have the most likelihood of being in that position. Obviously, the names are names that we understand as Hamas customers and entities. We didn't understand the complaint has a necessity to be a directory of every Hamas operative or entity. That's something that expands during discovery that we are seeking with those banks.

If I could turn to the deposition --

MR. SIEGFRIED: Your Honor, sorry, can I jump in on that for a moment? Apart from everything you've just said, the last statement is an extraordinary statement. So your - we are arguing or will be arguing that the Court doesn't have personal jurisdiction with respect to the claims asserted in the complaint. This was no tiny complaint. This was a very long complaint which listed five individuals, sixteen or seventeen entities, a lot of detail about it. And now the argument is, well, we think there may be some banks out there, we know they're not the correspondent accounts, they may have had customers or sent money to 70 some odd other individuals, and maybe we'll find a hit that actually

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1 went through CAB. And then what? So they did a transfer
2 to somebody who's not even in the complaint. So now
3 they're going to argue, well, that's a Hamas person and,
4 therefore, there's jurisdiction even though those persons
5 and entities aren't referenced in the complaint.
6

7 And this is all coming, we haven't heard, A,
8 when they, whether they even effected the service. This
9 is all coming close to your discovery deadline when they
10 said they would abide by the discovery deadline. And it,
11 you know, I don't normally want to use the word fishing
12 expedition, I'm glad that you did, in this circumstance,
13 but this is the problem, and, again, when we get into
14 this chart eventually, you'll see that, I mean there are
15 transfers to entities that they refer to aren't, again,
16 aren't in the complaint.

17 So I understand they want to use the
18 jurisdictional discovery to do all kinds of things, but
19 that's not what this is about. The 30(b)(6), again, what
20 I said, I'm not even sure why that's a 30(b)(6). If what
21 they want is a representation or a statement as to who
22 the correspondent accounts were, ~~wet~~they could do that.
23 That hardly requires a 30(b)(6) deposition to do that.
24 Actually, ~~Mr.~~ Mrs. Osen said I will work with you efficiently
25 on that.

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But I think you're getting a sense of the problem that we have. This is costly, this is, we're not the ones who brought an action 22 years after the events. They're stuck with the fact that having waited so long, these banks don't have records --

THE COURT: Well, to be fair, the law changed, and --

MR. SIEGFRIED: And it's within --

THE COURT: -- allowed the aiding and abetting claim.

MR. SIEGFRIED: It does, but to be equally fair, these plaintiffs, it's not just any plaintiff, these plaintiffs sued Arab Bank, they sued NatWest, they sued Credit Lyonnais. It's the same plaintiffs, the same claims, the same attacks, the same injuries. They just discovered 20 years after the fact CAB?

So they get the discovery, they have their complaint. But it has to be - this is why we're pushing back. Again, we want to be reasonable, but we don't want to be doing this months and months. And there's an additional prejudice, as I said, which is it is costly because when they go and they subpoena somebody like HSBC, as I used as an example before, HSBC produces thousands of pages of documents which we then have to

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review.

THE COURT: Right.

MR. SIEGFRIED: And for nothing, for zero, zero transactions.

THE COURT: Well, it seems to me that there's really not a basis to extend discovery by 90 days. I'll extend discovery to December 9. And if you are seeking to move to compel compliance with these subpoenas, those have to be filed in November by November 11, any motions to compel.

MR. RADINE: Okay. Did Your Honor want to be address the 30(b)(6) statements discussion?

THE COURT: Well, for the 30(b)(6) you all still have to meet and confer. It sounds like you're not done with that process from what I've heard, and I understand why you may want some testimony about exactly how the correspondent banking relationship worked, have something under oath about what were the correspondent banking relationships at the relevant time period. So I understand that, but it seems to me that you can further meet and confer on that.

MR. RADINE: That's fine. We heard a number of inaccuracies about the description of the IT systems and so on, but that can be the subject of the meet and confer

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process.

THE COURT: Yeah, I'm not limiting right now the 30(b)(6) topics. I'm just expressing some skepticism about the need for some of the topics, but you should still meet and confer on those. Because it seems to me there's a real question of what was happening with some of these transactions that you're listing here. I mean how many of these transactions even involve entities listed in the complaint?

MR. RADINE: I believe this list should correspond to the complaint. I don't --

THE COURT: Obviously, I recognize some of the names.

MR. RADINE: Yeah, I mean Holy Land Foundation is on most of, a lot of these. Interpal is on a lot. I think there'd be very few that aren't.

THE COURT: Right, but the point is what does CAB have to do with it? So what if Holy Land Foundation has an account with Bank One in Texas? What does that have to do with CAB? The question is is it going to, in these transactions, is it going to a CAB client that is mentioned in the complaint? That would be relevant. So my question is really the beneficiary parties because that's what we're looking at here, what the beneficiary

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parties, how many of these are named in the complaint?

Has anybody taken stock of that?

MR. RADINE: Sure. I can tell you I see mostly look in the beneficiary column, Your Honor, I see, again, mostly, a lot of Holy Land Foundation. The Zakat Committees were all in the complaint, I'm sure of that. Taha's in the complaint, Mohamed Salah Taha is in the complaint. So I don't see, excuse me, any, yeah, I don't know about every single one, but it looks like the overwhelming - ~~Al-Mujama~~~~Ombu Jama (phonetic)~~ is the central headquarters~~s~~ institution of Hamas. So I think that would certainly qualify. ~~Rami~~~~WAMY (phonetic)~~ is in the complaint. I don't see any that aren't, which is~~n't~~

to say my eyes aren't skipping over one looking at this list now, and obviously I don't understand the law to suggest that evidence that's outside the complaint isn't sufficient on summary judgment. Discovery often will --

THE COURT: Well, it has to be - discovery has to be relevant to the claims and defenses, and so, yes, discovery may involve information that's not included, facts that are not included in the complaint, but they still have to be facts relevant to the claims and defenses. So that's the limitation.

MR. SIEGFRIED: I might be able to help Mr.

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Radine out with his eyes on page 2 which is going no further than page 2. The ~~Halal~~-Halul Zakat Committee is not mentioned in the complaint. The ~~Suwad~~-Silwad Municipality is not mentioned in the complaint --

THE COURT: Okay. Well, there's some and there's some not. Okay.

MR. SIEGFRIED: Exactly.

THE COURT: So this is supposed to be related to jurisdiction as opposed to this general awareness which may potentially be slightly broader, and that's what you're, that's the - so it sounds to me like maybe some of these subpoenas are going beyond jurisdictional discovery and going into potentially this general awareness element. There's some argument that you don't want to subpoena banks twice if they're going to look for documents. At the same time it seems like they're quite broad.

I'm going to direct you to meet and confer on the Rule 30(b)(6). I'm not going to extend jurisdictional discovery any further beyond the December 11 date.

MR. RADINE: December 11?

THE COURT: Isn't that what I said?

ATTORNEY: December 9.

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THE COURT: December 9, sorry. November 11 is the date for any motions to compel. And I'll issue an order with that revised schedule. Are there other items that plaintiffs wanted to raise today?

MR. RADINE: I believe that is it for us, Your Honor.

THE COURT: Anything else defense counsel would like to raise? Yes.

MR. SIEGFRIED: The one item that you didn't touch upon, but I mention it not for purposes of a ruling because it falls under the meet and confer issue that Mr. Osen and I agreed to have, but which Mr. Radine also raised at least tangentially today, regarding witnesses. I asked Mr. Osen, since he has the burden of proof once you have jurisdictional discovery. To make out his jurisdictional argument, I asked him whether he saw this as a documents case and then the law ~~is~~ applied to the documents, or whether he saw this as a case in which he would require, in which he anticipated or potentially anticipated using witness testimony, whether it's by affidavit, deposition, whatever.

And when I first raised it several weeks ago or over a month ago, He said he hadn't really given it any thought, let him think about it, he understood the issue.

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1 When we had the meet and confer, I raised it again
2 because we had received a letter in the interim that,
3 well, we don't know what to put in until we see your
4 papers, and we wrote back you have the burden of proof.
5 It's not a question of what we put in; it's a question of
6 what, because we have the right to depose a person if
7 you're planning to call a witness. And it's your burden.
8 You're going to set forth the facts that you think are
9 relevant and why you think any transactions that the bank
10 may have engaged in through New York relate to, or that
11 your claims arise or relate to those transactions.
12

13 So we in the meet and confer, I think Mr. Osen
14 said he was inclined to believe that this was going to be
15 a documents and law case, that's fine. We agreed to talk
16 about it further. But I just wanted to put that on your
17 radar because clearly if we don't have an agreement about
18 that, I don't think this is all about hiding ~~the a-e~~ball.
19 This is about --

20 THE COURT: No, you have to have an exchange of
21 information and perhaps there's going to be testimony
22 from a 30(b)(6) witness about some of these transactions
23 on the sheet or, I don't know, maybe somebody from one of
24 these banks. I assume there's no dispute that these are
25 authentic records produced by the bank or the bank will

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say these are real records that they have, but you may dispute the, what they mean. But that would be the subject of testimony potentially, how they are interpreted.

Okay, well, I'm --

MR. SIEGFRIED: I don't think there's an authentication issue with respect to anything that's been subpoenaed.

THE COURT: Yes, right.

MR. SIEGFRIED: But --

THE COURT: Okay, so I'm just going to put a pin on that and ask you to meet and confer, and I think we do have a date for a next conference. Is that right, Chris? We do, okay. All right, well, have a Happy Halloween, everyone. Nice to see you. We're adjourned.

MR. SIEGFRIED: Thank you, Your Honor.

THE CLERK: November 15.

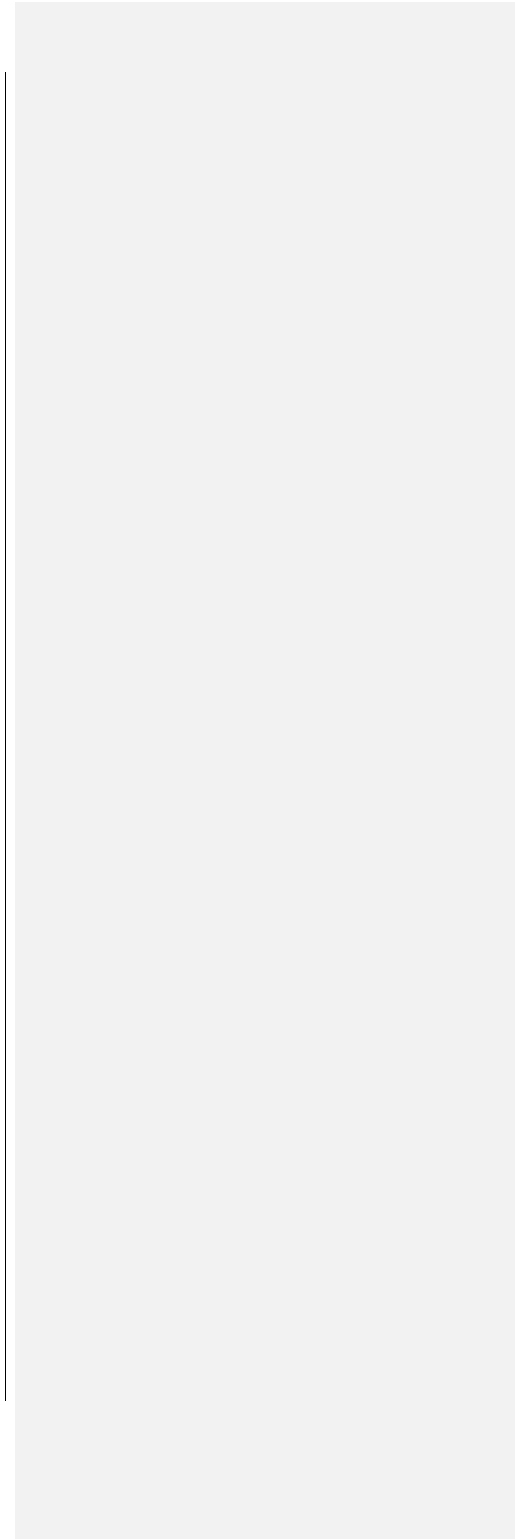
THE COURT: November 15, okay, well, then that's good because if there's any motions to compel, we'll know. You can invite the banks to that, if there are any motions to compel, you can invite the banks to that conference. Okay? Thank you.

(Whereupon the matter was adjourned to November 15, 2022.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Averbach, et al. versus Cairo Amman Bank, Docket #19cv0004, was prepared using digital electronic transcription equipment and is a true and accurate record of the proceedings.

Signature _____

CAROLE LUDWIG

Date: October 26, 2022